

**Nassau County  
Office of the Comptroller  
Field Audit Bureau**



**Financial Audit  
of the  
Syosset Sanitary District**

**HOWARD S. WEITZMAN**

*Comptroller*

**MA-05**

**September 8, 2005**

**NASSAU COUNTY**  
**OFFICE OF THE COMPTROLLER**

**HOWARD S. WEITZMAN**  
*Comptroller*

**Jane R. Levine**  
*Chief Deputy Comptroller*

Manuel Mosquera  
*Deputy Comptroller*  
*for Audits and Special Projects*

Susan D. Wagner  
*Deputy Comptroller*  
*for Operations/Chief of Staff*

Randolph Ghisone  
*Deputy Comptroller*  
*for Accounting*

Bruce G. Kubart  
*Deputy Field Audit Director*

Carol Khoury  
*Special Project Manager*

Aurora Scifo  
*Special Project Manager*

Audit Staff

Douglas Hutter  
*Field Audit Supervisor*

Table of Contents

---

<b><u>Contents</u></b>	<b><u>Page Number</u></b>
<b>Background .....</b>	<b>i</b>
<b>Audit Scope and Methodology .....</b>	<b>i</b>
<b>Cost Analysis of Operations .....</b>	<b>ii</b>
<b>Appropriateness of Fund Balance .....</b>	<b>iii</b>
<b>Compensation of Commissioners .....</b>	<b>1</b>
<b>Procurement Practices and Contract Monitoring .....</b>	<b>3</b>
<b>Legal Fees .....</b>	<b>3</b>
<b>Garbage Collection Bidding Process .....</b>	<b>5</b>
<b>Administrative Expenses .....</b>	<b>6</b>

## **Introduction**

---

### **Background**

In Nassau County, the county government is not responsible for collecting or disposing of solid waste from residents and commercial establishments. Instead, garbage collection in Nassau is arranged by the county's towns, cities, villages and, in some unincorporated areas not served by the towns, by a number of local, special "sanitary districts."<sup>1</sup> Local sanitary districts provide services only to residents and commercial establishments within their borders, and district expenses are paid for through local tax levies.<sup>2</sup>

Earlier this year, the County Assessor and others pointed out that the revenue raised and expenditures made by special taxing districts such as these sanitary districts occurred with little public scrutiny or governmental oversight. In response, our office undertook audits of the financial operations of a sample of Nassau's sanitary districts: The Port Washington Garbage District in North Hempstead; the Syosset Sanitary District in Oyster Bay, and Sanitary Districts 1, 2 & 6 in Hempstead. The sanitary districts in the sample generally maintained high tax rates or experienced large tax rate increases from 2004-2005 when compared to districts performing similar functions. Special sanitary district operations vary in size and complexity; some retain independent offices with fully equipped staffs while others share town administrative resources. In a few instances, districts contract with private haulers for refuse collection services.

One of these special districts is the Syosset Sanitary District (district) in the Town of Oyster Bay. The district contracts with a private hauler to provide refuse collection services to 762 residential and 108 commercial parcels, and total annual district costs were \$382,630 and \$395,914 for the fiscal years ended December 31, 2004 and December 31, 2003 respectively. The district derives all of its operating revenues, other than interest earned on investments, from real property tax assessments collected by the Town of Oyster Bay and forwarded to the district semiannually.

### **Audit Scope and Methodology**

The scope of our audit was limited to an examination of their administrative expenses, procurement practices, an analysis of their cost to operate and the appropriateness of its fund balances for the two year period January 1, 2003 to December 31, 2004.

This audit was conducted in accordance with generally accepted government auditing standards. These standards require that the audit is planned and performed to obtain reasonable assurance that the audited information is free of material misstatements. The audit includes examining documents and other evidence to substantiate the accuracy of information tested, including all relevant records and contracts. It includes testing for compliance with applicable laws and regulations and any other auditing procedures

---

<sup>1</sup>Nassau County sanitary districts are governed by the New York State Town Law, the Nassau Civil Divisions Act, and the Nassau County Charter.

<sup>2</sup> Town Law Article 12 § 198.

## **Introduction**

---

necessary to complete the examination. We believe that the audit provides a reasonable basis for the audit findings and conclusions.

### **Syosset Sanitary District Response**

The matters covered in this report have been discussed with district officials during the audit. On August 19, 2005 we submitted a draft report to district officials with a request for comments. The district's response was received on August 25, 2005. The district's response and our follow-up to those responses are contained within the audit report.

### **Cost Analysis of Operations**

In Syosset, residents and commercial establishments pay a tax levy to the Syosset Sanitary District for garbage removal and another tax levy to the Town of Oyster Bay Solid Waste Disposal District for garbage disposal. The average tax levy per parcel, including both the Sanitary District and the Disposal District, was \$670 in 2004 and \$511 in 2003. Tax levies vary annually, based on district expenses and use or accumulation of fund balances. Taxes were lower in 2003 than 2004 because the Sanitary District used \$124,297 in fund balances to support operations. This allowed the 2003 tax levy to be \$143 lower than if the Sanitary District funded operations entirely from the current year levy. The average tax per parcel of \$670 in 2004 was higher than the \$523 levy paid by residents and commercial establishments in the Town of Oyster Bay whose garbage is picked up by the town. The district picks up at the side/back door; the town picks up curbside.

### **District's Response:**

While your number of \$670 per parcel appears to be correct, in comparison to the \$523 levy per parcel for Town of Oyster Bay residents, you are comparing apples to oranges.

The Town of Oyster Bay provides a curbside disposal two times a week and once for recycling. The Sanitation District provides side or back door service three times per week and recycling once per week. The District provides a much higher level of service, which explains the alleged disparity.

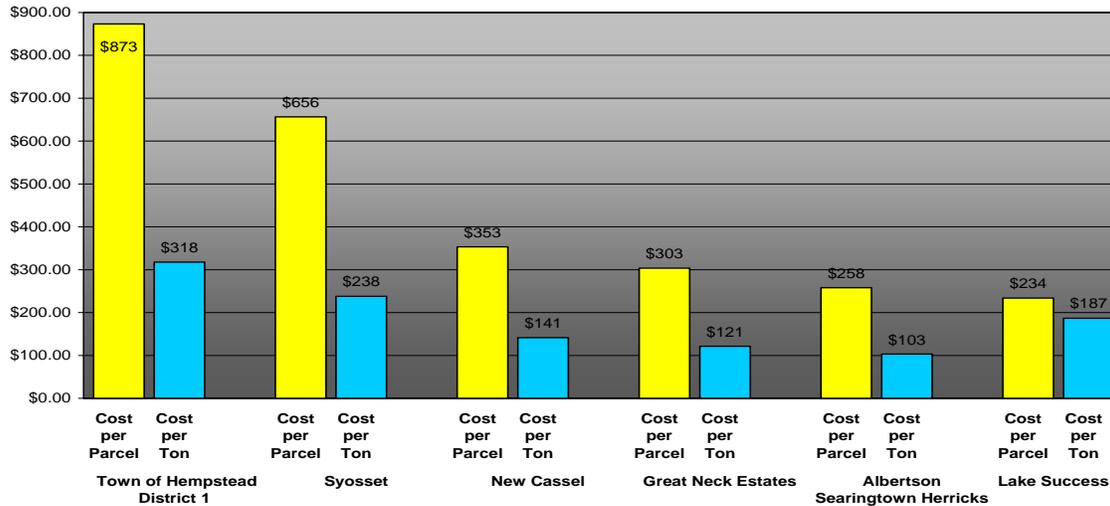
### **Auditor's Follow-up:**

*Our report acknowledges that the District provides side/back door service. As described in our report, we believe the residents of the district are paying substantially more than in other similar districts not as a result of service quality but because of excess administrative costs, including questionable attorneys' fees, office space rental expenses, and payments to commissioners for unnecessary inspections (see chart on page 7). In addition, as described in our report, because the contracting process used by the district to procure its private carter was not fully documented, we cannot be certain that the district is paying the lowest possible price for its private waste collection services. Below*

## Introduction

*is a cost comparison of the Syosset Sanitary District to other sanitary districts in Nassau County who provide side/backdoor service:*

**Special Sanitary Districts  
Comparison of Costs - Districts with Side/Back Door Service  
Average for 2003 and 2004**



### **Appropriateness of Fund Balance**

The New York State Comptroller conducted a study of unreserved and unappropriated fund balances in selected water, fire and sewer districts in Nassau County for the period January 1, 1998 through December 31, 2000. The study indicated that “recent changes in state law and prudent budgeting practices allow a ‘reasonable’ amount of unreserved fund balance to be retained to ensure the orderly operation of the district and continued provision of services.”

We reviewed the fund balance maintained by the district for 2003 using the NYS Comptroller’s recommendations. Audited financial statements for 2004 had not been prepared as of June 20, 2005, however the districts 2004 budget calls for no change in the fund balance. The fund balance for 2003 of \$34,920 represents approximately one month’s operating expense. This balance appears appropriate based on the State Comptroller’s recommendations.

## **Findings and Recommendations**

---

### **Audit Finding (1):**

#### **Compensation of Commissioners**

A Board of Commissioners consisting of three commissioners oversees district operations. The district paid each commissioner for attendance at 128 “meetings” in 2004 and 120 “meetings” in 2003. In 2004, the three commissioners were paid \$23,040; in 2003, they were paid \$21,600, for a total of \$44,640. We reviewed preprinted form checklists that served as minutes for ten district “inspection[s] or meeting[s]” held on January 2, 4, 8, 11, 13, 16, 22, 25, 28 and 31 of 2004. On these ten dates, all three district commissioners attended what apparently were waste collection regulation compliance inspections of part of or the entire district. Because the forms do not note specific properties inspected, we could not ascertain whether all three commissioners visited properties together, or whether each visited different properties in the district. Each of these inspections began between 7 and 8 a.m. and lasted from one to two hours. None of these inspections were in response to resident or vendor complaints, and none found any problem for which the resident needed to be notified. Because residents receive back door pick-up service, these inspections would have had to have been conducted by commissioners entering each resident's back or side yard.

A space on the form to document meeting notes indicated only the date the next meeting would be held and did not indicate that any other district business was conducted. On one day when the commissioners conducted a morning inspection, they also held an evening meeting.

Two statutes provide guidance as to how much compensation district commissioners may be paid; one is the State Town Law, applicable throughout New York State, and the other is the Nassau County Civil Divisions Act, originally passed by the state legislature in 1939 and last amended in 1981. Laws of 1939, Chapter 273, §203. Because the Divisions Act is applicable to Nassau County only, and is, therefore, more specific than the Town Law, we believe it takes precedence over the Town Law. For special districts, such as the Syosset Sanitary District, whose budgets are no more than \$800,000 a year, the Divisions Act empowers town boards to authorize commissioner compensation up to \$60 a meeting but no more than \$3,000 a year when authorized by a local town board, the Town Law would permit payments of up to \$80 to commissioners for a day's work and there is no limit on the total amount of payments. The Oyster Bay town board, in 1982, authorized payments of \$60 for each day worked pursuant to the Town Law. Because we believe the Divisions Act should take precedence, we found that the district paid compensation in excess of amounts that would be permitted by that Act. In 2003 and 2004, the Divisions Act would have permitted \$9,000 in total compensation; the district paid \$23,040 in 2004 and \$21,600 in 2003.

## Findings and Recommendations

---

### **Audit Recommendations:**

The district should:

- a. discontinue paying for “meetings” two to three times per week, which are actually compliance inspections of the district. Instead, the district should determine a more cost-effective method of obtaining compliance with district recycling and waste collection regulations, such as instructing the waste carter to forego pickup if residents and commercial establishments do not comply with the regulations and only inspecting in response to complaints that are not resolvable by the carter. Board meetings should be held when there is board business to conduct, such as vendor selection; and
- b. pay its commissioners in accordance with the limits set by the Nassau County Civil Divisions Act.<sup>3</sup>

### **District’s Response:**

The enclosed memorandum indicating the status of the law clearly shows that the Civil Divisions Act does not apply to the Syosset Sanitation District. The Civil Divisions Act of 1939, which is archaic and outdated, cannot be applied to the Sanitation District as it is governed by Section 214 of the Town Law. Therefore, your comment with respect to the non-compliance by the District with the Civil Divisions Act is not applicable and we do not accept this comment as being a valid one.

I might point out that the three commissioners were paid an average of \$7,600 per year to attend 128 meetings in 2004 or per diem of \$60 which is substantially less than is allowed by state law. Your preliminary audit report contains a conclusion that the meetings are “compliance meetings” and therefore are unnecessary. It is our opinion that in view of the fact that the no representative of your organization sits in at these “compliance meetings” that this is a conclusion that has no basis or support. The traditional complaint about commissioners not being concerned about the quality of service to radiator [sic] doesn’t apply here. The commissioners monitor the quality of service provided by their contractor out of their deep concern for the needs of the District’s residents.

### **Auditor’s Follow-up:**

*The district’s commissioners met 128 times in 2004; a minimum of 10 times per month. In August of 2004, for example, the three commissioners, who were each paid \$60 per meeting, met twelve times. According to meeting minutes prepared by district*

---

<sup>3</sup> While auditing county sanitary districts, we have noted that some follow the Divisions Act and others the Town Law. Approximately half the districts we audited appear to follow the Act while the remainder appear to follow the Town Law. This issue does not materially affect our report’s finding that the district commissioners are receiving compensation for an inordinately large number of “meetings” or inspections. It does, however, highlight a confusion in district and town leadership as to which law applies. We suggest, therefore, that the district and/or town attorneys request guidance from the State Attorney General in this matter.

## **Findings and Recommendations**

---

*commissioners, nine of these twelve meetings were district “inspections”, and these inspections lasted one or two hours. The business conducted during these inspections should be evident from the minutes. It is evident to us 128 “meetings” in a year; or 2 to 3 time per week, whether for compliance inspections or board meetings, is excessive.*

*Whether the Divisions Act or Town Law is applicable to the district does not affect our finding regarding overcompensation. Applying either law, the practice of charging district residents without reasonable justification is both wasteful and irresponsible. We acknowledge that in 1982 the Town of Oyster Bay, Resolution No. 60-82, passed pursuant to the Town Law, authorized district commissioner payments of \$60 per day “for each day actually and necessarily spent in the service of the district.” However, our finding focuses on the necessity of holding 128 “meetings” per year in a district the size of Syosset that provides back/side door service that is contracted out to a private hauler.*

### **Procurement Practices and Contract Monitoring**

#### **Audit Finding (2):**

##### **Legal Fees**

Legal fees for the district totaled \$67,243 and \$55,113 in 2003 and 2004 respectively. In 2004, the district retained the law firm of Murphy, Bartol & O’Brien, LLP (Murphy, Bartol), as its counsel for a fee of \$7,800. The retainer agreement provided that the firm would “negotiate and prepare all documents, including but not limited to contracts, agreements, letters of collection, and any other incidental work that may be required as a result of this retainer . . . .” The retainer agreement did not include litigation costs; the firm was paid an additional \$38,479 in 2004 for litigation. In addition, the district hired a second lawyer, Elisabetta Tredici, as Special Counsel at a rate of \$175.00 per hour “with regard to any and all designated legal needs.” Tredici was paid \$8,842.80 in 2004. General Municipal Law (GML) 104-b requires that the district adopt a procurement policy for procuring these services “so as to assure the prudent and economical use of public moneys in the best interests of the taxpayers of the political subdivision or district, to facilitate the acquisition . . . services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption.” No such policy appears to have been adopted.

We found that the district paid Tredici to perform work that appeared to have been included in the retainer agreement with Murphy, Bartol. For example, a July 25, 2004, invoice from Tredici included charges of \$1,076.25 for a telephone conference regarding Certified Public Accounting firm proposals to review the district’s “budgetary and spending practices and to provide the district with an opinion as to same”, even though Murphy, Bartol’s retainer covered the “negotiation and preparation of contracts or agreements.”

## Findings and Recommendations

---

### **Audit Recommendations:**

The district should:

- a. closely monitor contracts and make sure it receives and understands the services it has contracted for;
- b. assign work covered by retainer agreements so that it does not pay for services the district is already entitled to at no additional charge; and
- c. establish a procurement policy for professional services in compliance with GML Section 104-b. The board's policy should, inter alia, ensure competition and that auditing firms not be permitted to serve for more than a set number of years consecutively. In addition, the board should require formal written agreements for all contracted services.

### **District's Response:**

Your report contains a finding that an additional lawyer was paid in addition to annual counsel. We contest the basis of that finding on the following ground. The District must, on certain occasions in connection with certain issues, seek a second opinion from special counsel. To do so, gives the District the opportunity to find out whether there is any conflict between the existing counsel and special counsel on sensitive subjects. Just as individuals seek second opinions from medical personnel on sensitive issues, it is the prerogative of an agency charged to handle public funds, to seek an opinion of other counsel. The charge for \$1,076.25 covered several hours of work and was not for one "conference call." The charge was necessary for budget evaluation purposes which is not within the framework of retained counsel's agreement.

### **Auditor's Follow-up:**

*The district states that it is necessary to seek a second opinion from a special counsel to ascertain whether "there is any conflict between the existing counsel and special counsel on sensitive subjects." As a general practice it is inefficient to enlist the services of secondary counsel to address every issue presented to the district. The hiring of a second counsel should not occur until circumstances require specific special expertise lacking from existing counsel. Our auditors found that the district hired "special counsel" to perform routine legal services already provided by its general counsel and covered in its existing retainer agreement. The invoice cited in our example was only a portion of the \$8,842.80 spent from July to December of 2004 on "special counsel services", some that were also included in the general counsel retainer agreement.*

*According to the July 25, 2004 special counsel's invoice for \$2,254.05, the \$1,076.25 charge mentioned in our audit finding was for services covered under the district's General Counsel's retainer agreement. The retainer agreement covers "negotiate and prepare all documents, including but not limited to contracts, agreements...;" the special counsel invoiced the district for "review of proposals for services" and a telephone call to discuss "space rental". We question the practice of obtaining second opinions on routine legal matters, creating an unnecessary additional cost to the district.*

## **Findings and Recommendations**

---

### **Audit Finding (3):**

#### **Garbage Collection Bidding Process**

We reviewed the bidding process for the 2004-2007 garbage collection contract and the three bids submitted. In 2003, the contract for the 2004-2007 period was not awarded to the lowest bidder. The district appears to have rejected the lowest bidder based on a letter written by the second lowest bidder's lawyer. According to the letter, the lowest bid contained "clearly contradictory language" [and]... (a)s such should be rejected as non-responsive..." because it stated "our proposal is based on the tipping fees as published by the Town of North Hempstead effective July 1, 2003..." Apart from the competitor's letter, the district did not document its rejection of the lowest bidder. We discussed the rejection of this bid with one of the district Commissioners, but he could not clarify or provide any documentation as to why the bidder's language about North Hempstead tipping fees disqualified its bid.

### **Audit Recommendation:**

The district must follow General Municipal Law Section 103 in its award of its waste collection contracts. Contracts must be awarded to the bidder that has submitted the lowest cost bid responsive to the specifications contained in the request for bids. In addition, the bidder must be found to be responsible. When a contract is awarded to other than the lowest cost bidder, the district should maintain adequate documentation supporting its finding that the bid was not responsive or that the bidder was not responsible.

### **District's Response:**

The District chose to reject the so-called low bidder in connection with the approval of a new sanitation contract. The basis of the rejection was the fact that the bid did not comply with the bid specifications of the District in that it provided for the removal of refuse to outside private facilities and not those owned by the Town of Oyster Bay. Under the circumstances, the action of the Sanitary District in rejecting the low bidder was one based on the non-compliance of the low bidder. As you know, standard bids specifications provide that a local government has the right to reject a bid for non-compliance or for any other reason that it deems appropriate and proper. Subsequent to the rejection, the District sought new bids and the original low bidder did not participate on the second round of solicitations.

### **Auditor's Follow-up:**

*In accordance with General Municipal Law §103, the district's solid waste collection contract must be awarded to the lowest responsible bidder. In its response, the district contends that after its August 15, 2003, bid opening, the low bidder was found not to have submitted a bid responsive to the district's bid specifications and that, as a result, it rebid the contract. Despite this assertion, the district did not supply us with documentation of its decision to find the low bidder unresponsive or any documentation*

## **Findings and Recommendations**

---

*demonstrating that the contract was rebid. We were simply supplied with a letter from a competing vendor (the second low bidder), who ultimately was awarded the contract, claiming that the low bid was unresponsive, and were told by one of the commissioners that, in response to the letter, the competing vendor was awarded the contract. In addition, the documentation we were supplied, which includes a copy of the winning bid, does not support the contention that the contract was ever submitted for rebid. If supporting documentation exists, it should have been made available to our staff.*

### **Audit Finding (4):**

#### **Administrative Expenses**

Administrative expenses including but not limited to commissioner's fees, legal and professional expenses, and insurance totaled \$100,310 in 2004 and \$109,594 in 2003, more than 25% of total district expenses for each year. Residents of the district paid on average \$115 and \$126 annually per parcel for administrative fees in 2004 and 2003 respectively. The primary components of the administrative expenses were commissioner's compensation, accounting fees and legal fees, which totaled \$91,776 and \$97,288, for 2004 and 2003, respectively. The district began renting an office space in August 2004 at a cost of \$750 per month (\$9,000 a year). The office space was obtained to hold board meetings and to maintain district documents; nevertheless, as of the date of our fieldwork in June 2005 many of the documents we requested were not available at the rented office space and had to be retrieved from the lawyers and accountants working with the district. Moreover, as discussed above, many of the "meetings" the board held were actually inspections not requiring the use of an office. We have examined a similarly run sanitary district that conducts its semimonthly board meetings in the offices of its lawyer. Because the Syosset district is small, documents and paperwork could possibly be stored elsewhere at a savings to the taxpayer. For example, the district should consider contacting the Town of Oyster Bay to determine whether it could contract with it for space to store its documents.

#### **Audit Recommendations:**

Because administrative expenses are 25% of total district expenses, the district should:

- a. explore more efficient and less costly methods of overseeing district operations;  
and
- b. reevaluate its need for office space.

#### **District's Response:**

The Commissioners decided to rent an office within the borders of the Sanitation District in order to make their meetings accessible to the general public. The Open Meetings Law provides that meetings are to be held in such manner that there will be no objections by the public to the locale. It was the opinion of the District that it would be inappropriate for them to meet in a private home or in a facility outside the District and they did not want to be criticized for same. The decision to rent space at a nominal cost of \$750 per

## Findings and Recommendations

---

month allows compliance with state law and also removes the potential of criticism of meetings being held in private homes, which under any and all circumstances, is inappropriate for a public body. The offices will also be used for record storage as there is no space available at any town facilities.

### Auditor's Follow-up:

*The district states that because it must hold its board meetings in compliance with the Open Meetings Law, it had to rent an office costing \$750 a month, or \$9,000 a year. Compliance with the Open Meetings Law should not necessitate this expenditure. Particularly since the district contends that it is an administrative unit of the Town of Oyster Bay, it should be able to obtain the use of town facilities in which to hold its board meetings. Additionally, most of the "meetings" the district holds are not board meetings in any traditional sense: according to the district minutes they are district solid waste collection compliance "inspections" not held inside an office. Also, the Open Meetings Law requires that public notice of the time and place of each meeting scheduled be given to the media and posted in a designated public location. New York Public Officers Law §104. The district did not provide us with any documentation demonstrating that this statutory requirement is followed.*

*Below is a comparison of the two-year average administrative cost per parcel for the Syosset Sanitary District and the Port Washington Garbage District. Both districts contract with a private hauler for refuse collection services.*

